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No. 83-525

In the Supreme Court of the United States

OCTOBER TERM, 1983

JACQUELYN A. JONES, ETC., PETITIONER

v.

MARGARET M. HECKLER,
SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner claims that the Secretary of Health and Human Services erroneously determined that she and her children by her former husband, a deceased wage-earner, were not entitled to Social Security benefits on his account.

1. The facts are not in dispute. Petitioner married Jack Ladd in 1961, and three children were born of that marriage (Pet. App. A2). Petitioner and Jack Ladd were divorced on November 21, 1968, and one month later petitioner married Floyd Jones (*id.* at A23-A24). With Jack Ladd's consent, Jones adopted the three Ladd children in a 1969 proceeding in the Circuit Court of Oregon for Lane County (*id.* at A8).

In 1971, Jack Ladd, then a resident of Arizona, was killed in an automobile accident (Pet. App. A3). In 1972, petitioner divorced Floyd Jones (*ibid.*). In 1975, petitioner applied for Social Security benefits for herself and her three

children on the account of Jack Ladd (*id.* at A8-A9). The Social Security Administration initially determined that petitioner and her children were entitled to benefits, and they received a lump sum retroactive payment in August 1976 and monthly payments thereafter; in all, petitioner and her children received $14,495.20 in benefits (Pet. 8; Pet. App. A39).

Shortly after she first began receiving Social Security benefits for herself and her children, petitioner obtained an order from the Circuit Court of Oregon for Lane County, dated October 16, 1976, which "set aside" Jones's 1969 adoption of the Ladd children and further provided that, " 'for all intents and purposes said children shall be considered to be the children of Jack A. Ladd' " (Pet. App. A40).

In April 1977, the Social Security Administration reversed its initial determination, concluding that petitioner and her children were not entitled to benefits on the account of Jack Ladd because the children had been adopted by Jones and there was no basis under Oregon law for the setting aside of the adoption decree (Pet. App. A40-A42). Although future benefits were terminated, the Social Security Administration waived recovery of the nearly $15,000 that had already been paid to petitioner and her children (*id.* at A18, A42).

Petitioner then filed this action in the United States District Court for the District of Oregon, seeking review of the Secretary's decision to terminate the benefits she and her children previously had been receiving. Before any decision had been rendered by the district court, petitioner sought "clarification" from the Oregon Circuit Court of its 1976 order setting aside the 1969 adoption decree (Pet. App. A42). The state court, in a decision dated March 4, 1980, held that its 1976 "set-aside" order was retroactive to 1969 and that the adoption of the Ladd children by Floyd Jones

was void ab initio because Jack Ladd had lacked the mental capacity to consent to the adoption of his children (*id.* at A51-A53). In light of this action by the state court, the federal district court remanded petitioner's case to the Secretary for reconsideration (*id.* at A50).

On reconsideration, the Social Security Administration adhered to the position that petitioner and her children were not entitled to benefits on the account of Jack Ladd (Pet. App. A17-A35). That determination was based on the conclusion that the Oregon court's orders of 1976 and 1980 were beyond the authority of that court to enter because Oregon law provides that an adoption decree is final and binding on all parties after one year, and thus Arizona, Ladd's place of residence at the time of his death, would not recognize the validity of the Oregon orders setting aside the adoption (*id.* at A30-A31). In addition, the Social Security Administration determined that petitioner's children were not entitled to benefits in any event because they were not in fact dependent on Ladd for their support at the time of his death (*id.* at A31-A32).

The district court upheld the decision of the Social Security Administration on remand (Pet. App. A7-A16). The court of appeals affirmed in an unpublished memorandum (*id.* at A2-A6).

2. The unanimous decisions of the administrative agency and the courts below warrant no further review. The Secretary was correct in denying petitioner's claim for Social Security benefits for herself and her children.

a. The Secretary's denial of benefits turns on whether an Arizona court would recognize the 1976 and 1980 Oregon court orders setting aside the prior adoption decree as void ab initio. Although no Arizona court has ruled in this case,

Arizona was Ladd's domicile at the time of his death, and thus, for purposes of Social Security benefits, its law governs the legal question of his children's paternity. See 42 U.S.C. 416(h)(2)(A). Accordingly, what petitioner dresses in constitutional clothes is simply an issue of state law. Cf. *Bishop* v. *Wood*, 426 U.S. 341, 344-347 (1976). While "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State" (U.S. Const. Art. IV, § 1), Arizona must give the Oregon judgments only as much credit as they have "by law or usage in the courts of such State * * * from which they are taken." 28 U.S.C. 1738.

b. The state from which the 1976 and 1980 orders are taken would not enforce them. Under Oregon's own law, the Lane County Circuit Court lacked power to issue the "set-aside" orders because the 1969 adoption decree was impervious to attack after 1970. Or. Rev. Stat. § 109.381 (1981);[1] *State* v. *Briggs*, 245 Or. 503, 506, 420 P.2d 71, 72 (1967) (collateral attack on a court's jurisdiction barred unless lack of jurisdiction appears on the face of the record). The 1969 adoption decree is unquestionably valid on its face; no case cited by petitioner (Pet. 19-22) suggests otherwise. In taking testimony in 1980 to conclude that Jack Ladd lacked mental capacity in 1969 to consent to the adoption, the Lane County Circuit Court thus exceeded its own jurisdiction. See Pet. App. A5, A14-A15. The Full Faith and Credit Clause does not require Arizona to give

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[1]In pertinent part, that statute provides as follows:

> (3) After the expiration of one year from the entry of a decree of adoption in this state the validity of the adoption shall be binding on all persons * * *, all irrespective of jurisdictional or other defects in the adoption proceeding; after the expiration of such one-year period no one may question the validity of the adoption for any reason, either through collateral or direct proceedings * * *.

the 1980 order more force than it could have in Oregon, the doctrine of res judicata notwithstanding.[2]

c. Under petitioner's own analysis (Pet. 18), Arizona would not go behind a facially valid adoption decree that is recognized in the rendering state. See *In re Adoption of Hadtrath*, 121 Ariz. 606, 592 P.2d 1262 (1979).[3] Unlike the unenforceable and facially invalid 1980 order, the 1969 adoption decree meets the test for full faith and credit in Arizona. See, *e.g.*, *Jones* v. *Roach*, 118 Ariz. 146, 575 P.2d 345 (Ct. App. 1978). Under these circumstances, the Secretary and the courts below correctly determined that petitioner and her children are not entitled to Social Security benefits on the account of Jack Ladd.

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[2]Petitioner cites (Pet. 23) *Treinies* v. *Sunshine Mining Co.*, 308 U.S. 66 (1939), for the proposition that even if the Lane County Circuit Court lacked jurisdiction to enter the 1980 order, Arizona should not "re-explor[e]" that question. But nothing in the 1980 order reflects any exploration at all of jurisdiction or of the effect of Or. Rev. Stat. § 109.381 (1981). See Pet. App. A51-A53. Moreover, petitioner does not claim that she ever advised the Lane County Circuit Court of the statutory bar to the issuance of any orders affecting the 1969 adoption decree.

Thus, more apt than *Treinies* is the Court's observation in *Durfee* v. *Duke*, 375 U.S. 106, 110 (1963), that "a judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits — had jurisdiction, that is, to render the judgment." Furthermore, the court in the second state is entitled to ascertain whether "questions [of jurisdiction] have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Id.* at 111.

[3]In *Hadtrath*, the Arizona Supreme Court refused to permit an adoptive father to challenge an allegedly invalid adoption decree that he had previously obtained in a non-adversary proceeding, stating (121 Ariz. at 610, 592 P.2d at 1266):

> In the case before us, appellant was not prevented from presenting any matter to the court [that issued the adoption decree]. On the contrary, he joined in presenting the allegedly fraudulent consent [of the natural father] to the court.

Here, too, petitioner should not be permitted to attack the 1969 adoption decree that she herself helped to procure.

3. As previously noted (see pages 2-3, *supra*), the district court initially remanded this case to the Secretary to reconsider the denial of benefits in light of the 1980 Oregon order. Petitioner now makes the meritless claim (Pet. 24-26) that the Secretary's subsequent failure to hold another evidentiary hearing was a denial of due process. In its order of remand, however, the district court (adopting the recommendations of the magistrate) concluded that "[n]one of the critical facts * * * are in dispute" (Pet. App. A43) and that the only question was one of law, *i.e.*, "whether the [1980] decree * * * restore[d] [the children] to the status of automatic 'deemed dependency' " on Ladd within the meaning of the Social Security Act, 42 U.S.C. 402(d)(3). (Pet. App. A47). Petitioner cites no authority for the proposition that the Constitution requires an evidentiary hearing when there are no disputed facts about which to hear evidence. See *Codd* v. *Velger*, 429 U.S. 624, 627 (1977). Compare *Goldberg* v. *Kelly*, 397 U.S. 254, 268-269 (1970).

4. Finally, petitioner's equal protection claim is frivolous.[4] She appears to argue (Pet. 28-31) that adopted children *not* deprived of financial support by their natural father's death have an interest in obtaining survivor's benefits equal to that of children who *are* deprived of such support. But the former are not "invidious[ly] classifi[ed]." Cf. *Levy* v. *Louisiana*, 391 U.S. 68, 71 (1968). The Secretary's denial of benefits to them bears a reasonable relationship to all five of the purposes of the Social Security Act that petitioner herself cites (Pet. 29) because they all concern compensating actual, not fictional, economic loss.[5]

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[4]Petitioner did not raise her equal protection claim in the lower courts, and thus it should not be considered here. See, *e.g.*, *United States* v. *Lovasco*, 431 U.S. 783, 788 n.7 (1977).

[5]Petitioner's concern (Pet. 27-28, 31) that the legal status of her children now "lacks consistency and predictability," even if true, raises no equal protection issue, nor does it have anything to do with the

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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Secretary's determination that petitioner's children are not entitled to Social Security benefits on account of their natural father's death.

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